

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERRI L ADKINS-DIA
Claimant

APPEAL 15A-UI-05867-KC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 04/26/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 26, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2015. The claimant participated and was represented by Andy Le Grant, Attorney at Law. The employer participated through David Rodriguez, Human Resources Specialist, and Marvin Rung, Supervisor. The employer was represented by Tara Hall, Attorney at Law. Exhibits 1 - 10 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying, work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a janitor from January 27, 2014, and was separated from employment on April 27, 2015, when the employer discharged her.

The claimant has been counseled for falsifying documents regarding the cleaning she was doing. On October 9, 2014, she received a written counseling II progress report regarding her job performance. She completed paperwork indicating the entire training facility had been cleaned. Supervisor Rung found that she had not mopped or swept. She had been working with someone else but did not verify that the mopping and sweeping had been done. She was warned that further incidents would result in additional progressive counseling up to and including termination. She refused to sign the counseling. (Exhibit 9)

On January 29, 2015, she was suspended from January 30 with a return to work on February 2, 2015. The claimant had requested an exception to the usual cleaning procedures for coolers. She stated that she could not get her other work done without an exception. She was observed talking to people and using her cell-phone from 11:48 p.m. to 12:24 a.m. The claimant usually clocks out at 12:30 a.m. She was warned again about future progressive discipline. She refused to sign the counseling. (Exhibit 10)

On April 21, 2015, the claimant submitted an adjustment form indicating that she had worked additional time before her shift. At the request of two contractors, she worked with them to clean under the fridge where it had been leaking from 3:06 p.m. until 3:50 p.m. (Exhibit 1) The employer asked security to run footage of when she entered the building and clocked in. Jean Speis, Human Resources Manager, who conducted an investigation into the matter, watched the security video from April 21, 2015 and identified the claimant. Rung also watched the footage. The employer relied on security footage to show that she entered the building at 3:13. The end time of her additional work time was after the contractors she had been helping had been out of the facility for approximately 24 minutes. Photographs were taken of the security footage. Rung identified the claimant in those images. (Exhibit 3 - 5). The claimant asked someone else how long they thought she had been working. She usually clocks in at 3:55 p.m.

Upon hiring, the claimant received training on the counseling system, rules and policies. Major rule violations include any form of dishonesty or cheating in the workplace. (Exhibit 6) The claimant was not honest about why she requested reduced duties when she then talked and used her cell-phone, just before the end of her shift.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's

duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The claimant has been deceptive as reflected by her conduct leading to repeated warnings regarding falsifying documents. Her conduct in asking to do an abbreviated cleaning process because she could not complete all her work before the end of her shift and then not working for approximately 30 minutes just before the end of her shift reflects deception and conduct not in the best interest of the employer.

The employer has presented substantial and credible evidence that the claimant violated company policy after having been warned. This is evidence of deliberate conduct in violation of company policy, procedure, or prior warning. The employer's request was not unduly burdensome or unreasonable. Benefits are denied.

DECISION:

The April 26, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs